HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.2137 of 1995

Between:

Sri Vruddhula Kalyana Ramarao

… Petitioner

AND

National Bank for Agriculture and Rural Development,
Sterling Centre, Dr. Annie Besant Road,
P.B.No.6552, Worli,
Bombay – 400 018,
rep. by its Managing Director
and another

…Respondents

ORDER

Counsel for the petitioner : Shri A.Venkataramana
for Shri D.V.Sitharama Murthy

Counsel for respondents : Ms. V. Uma Devi

14-11-2006

Whether the petitioner is entitled to gratuity under National Bank for Agriculture and Rural Development (Payment of Gratuity to Employees) Rules, 1983 (for short 'the 1983 Rules') is the question which arises for determination in this petition filed by Sri Vruddhula Kalayana Rama Rao under Article 226 of the Constitution.

The petitioner joined the services of Reserve Bank of India on 24-12-1980. After one year and about seven months, he was transferred to the services of National Bank for Agriculture and Rural Development (for short 'the NABARD'). While he was holding the post of Deputy Manager (Legal), the petitioner submitted letter dated 29-04-1987 expressing his wish to resign with effect from 31-07-1987. After one month and 12 days, he submitted another letter dated 11-06-1987 for withdrawal of the resignation. The management of the NABARD did not accept his second request and accepted the letter of resignation.

The petitioner challenged the acceptance of his resignation in Writ Petition No.19037 of 1987. He claimed that he was entitled to withdraw the letter of resignation before 31-07-1987 and the management did not have the power, jurisdiction or authority to accept the same before that date. By an order dated 2-3-1993, the learned Single Judge held that the management of NABARD could not have accepted the petitioner's resignation before 31-7-1987 and letter dated 11-6-1987 submitted by him for withdrawal of resignation was valid in law. However, by taking note of the fact that after being relieved from the services of NABARD, the petitioner had started practice as an Advocate and with effect from

17-05-1989, he joined the services of Steel Authority of India Limited, the learned Single Judge granted relief of full back wages only up to the date of petitioner's joining service under the Steel Authority of India. For the sake of convenient reference, the relevant extracts of the order passed by the learned Single Judge are re-produced below:

> "In view of the authoritative pronouncement in BALRAM GUPTA's case following the earlier Supreme Court Judgment in GOPALCHANDRA's case, I cannot countenance the argument of Mr. K.Srinivasa Murthy. That apart, the decisions rendered in RAJ KUMAR's case and RAJ NARAYAN's case are based on their own facts which are not similar to the one on hand. The judgment rendered in BALRAM GUPTA's case which is in consonance with the earlier Constitutional Bench judgment of the Supreme Court in GOPALCHANDRA's case and followed by this Court, applies to this case on all fours. In the circumstances, I hold that before 31st July, 1987, there was no power or authority for the respondents to accept the resignation of the petitioner and his letter dated 11-6-1987 withdrawing his resignation letter dated 29-4-1987 was valid in law and as such the resignation letter dated 29-4-1987 has become inoperative and consequently the act of the respondents in depriving the petitioner of his continuance in duties is illegal, arbitrary and without jurisdiction.
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> The last point for consideration is with regard to the entitlement of the petitioner for back wages. The only thing alleged against the petitioner was that the petitioner being a law graduate had joined his brother's chamber and practised as legal practitioner for about one and half years. There is no evidence forthcoming on the part of the respondent-Bank, as to what was the exact earning of the petitioner through the said short period of his advocacy. Mr. D.V.Seetharama Murthy, contends that the petitioner during that short tenure cannot be expected to earn any amounts worth mentioning and that as such it cannot be said that he was gainfully employed so as to disentitle him from having back wages. Even though Mr. K.Srinivasa Murthy replies that the petitioner was gainfully employed, he could not furnish me any data of actual income of the petitioner. But it is not difficult to assume what could be the income of the petitioner having regard to the fact that he did not practice earlier and that he was a fresher as an Advocate which also did not last long as he has got employment elsewhere with

effect from 17-5-1989. It can be taken judicial note of that in the early periods of advocacy, particularly, for the first three years, there will not be any significant income and it depends upon a senior who may pay, which may be hardly sufficient for his pocket expenses, even if such a payment is made. It is a well-known saying that there are three stages for an Advocate, i.e., (1) no practice, no money, (2) practice and proportionate money, and (3) practice and more money. The petitioner fits only under the first limb and even if the same is termed as gainful employment by the respondents, such a plea will be untenable. In this context, the comment of the Supreme Court in RAJENDRA KUMAR's case is apt to be mentioned. The Supreme Court while lamenting and rejecting the plea of management that the petitioner in that case was gainfully employed while out of job for maintaining his family helping his father-in-law in his coal depot and living with him having no other source, held that "if this could be gainful employment, begging by the employee would as well be gainful employment." While holding so, the Supreme Court granted full back wages to the employee concerned therein. The said judgment is squarely applicable to the instant case also and in view of the same, I grant the full back wages to the petitioner payable by the respondents for the period up to 17-5-1989. The said payment shall be made within two months from the date of receipt of this order."

After about two years of the decision of Writ Petition No.19037 of 1987, the petitioner instituted the present writ petition for issue of a mandamus to the respondents to pay him gratuity in lieu of his service from 24-12-1980 to 17-05-1989.

Respondent Nos.1 and 2 have controverted the petitioner's claim. In the counter-affidavit filed by Shri Sanjit Kumar Chatterjee, Deputy General Manager, NABARD, it has been averred that the petitioner is not entitled to gratuity because he had voluntarily resigned before completing ten years of service.

Shri A.Venkataramana, learned counsel for the petitioner relied on Rule 10 (2) (iii) of the 1983 Rules and argued that illegal

acceptance of the resignation submitted by the petitioner on 29-04-1987 amounted to termination of his service for reasons other than reduction of establishment, and therefore, he is entitled to the benefit of non-obstante clause contained in that rule. Learned counsel submitted that if the petitioner had not taken up employment in the services of Steel Authority of India Limited, he would have become entitled to be reinstated in the service of NABARD and therefore, the illegal acceptance of his resignation should be construed an act of termination of services falling within the ambit of clause (iii) of Rule 10(2).

Ms. V.Uma Devi, learned counsel for respondent Nos.1 and 2 emphasised that the resignation submitted by the petitioner vide letter dated 29-04-1987 was not preceded by any act of coercion or inducement by the management of the NABARD and, therefore, the same will have to be treated as a voluntary act and by no stretch of imagination the acceptance of resignation can be equated with the termination of service for the purpose of Rule 10 (2) (iii).

I have considered the respective submissions and perused the record. Rule 10 of the 1983 Rules, which has bearing on the claim of the petitioner, reads as under:

> "10 (1) No gratuity will be granted to or in the case of an employee if he has not completed service in the National Bank for a minimum period of ten years;
> (2) Notwithstanding anything contained in sub-rule (1), gratuity will be granted to, or in the case of, an employee who has not completed service in the National Bank for a minimum period of ten years, if
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> (i) he dies while in service of the National Bank, or
> (ii) he has retired or has been required to retire, either on account of certified permanent incapacity due to bodily or mental infirmity or owing to the abolition of his appointment on account of reduction of establishment, or
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> (iii) his service in the National Bank is terminated by the

National Bank for reasons other than reduction of establishment."

A reading of the plain language of Rule 10 makes it clear that the minimum service required for entitling an employee to claim gratuity is ten years. Sub-rule (2) of rule 10 which begins with non-obstante clause carves out certain exceptions and lays down that an employee who has not completed ten years of service may be paid gratuity if he dies while in service of the NABARD or is retired or has been required to retire from service on account of permanent incapacity due to bodily or mental infirmity or abolition of appointment as a sequel to reduction of establishment or his service is terminated for reasons other than reduction of establishment. What is implicit in the language of Rule 10 (2) is that for entitling an employee to claim gratuity, the cessation of master and servant relationship between NABARD and the concerned employee should be by way of voluntary act on the latter's part. Therefore, the termination of service envisaged under Rule 10 (2) (iii) of the Rules has to be an overtact on the employer's part to dispense with the service of the employee. To put it differently, once there is an act of volition on the employee's part, severance of relationship of master and servant by the employer cannot be treated as termination of service for the purpose of that rule.

The petitioner, as mentioned above, had voluntarily resigned from service. Therefore, his case cannot be treated as one falling within clause (iii) of rule 10(2) of the 1983 Rules and despite order dated 02-03-1993 passed by the learned Single Judge invalidating the acceptance of resignation, his claim for payment of gratuity under the 1983 Rules cannot be upheld.

For the afore-stated reasons, the writ petition is dismissed.

G.S.SINGHVI, CJ

14-11-2006

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